

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LENG YANG,

Defendant-Appellant.

UNPUBLISHED

March 25, 2003

No. 235966

Ingham Circuit Court

LC No. 00-075519-FH

Before: Owens, P.J., and Talbot and Meter, JJ.

PER CURIAM.

Defendant appeals by right from his conviction following a bench trial of aggravated stalking, MCL 750.411i(2). The trial court sentenced him to forty to sixty months' imprisonment. We affirm. This appeal is being decided without oral argument under MCR 7.214(E).

The trial occurred on June 5, 2000. Officer David Blackman of the Lansing Police Department testified as follows: On October 1, 1999, he responded to an emergency call from a Lansing residence on Foster Street at approximately 2:00 a.m. He found Yia Xiong and two of her children inside the residence, crying in a corner of the family room. Defendant, the children's father and Xiong's ex-husband, told Blackman "that everything was fine" and that the officer could leave.¹

Officer Timothy Adams of the Lansing Police Department testified that on December 17, 1999, he met with Xiong at the Council Against Domestic Abuse (CADA) women's shelter. Adams testified that Xiong seemed to be scared about talking with him and that she "had some red marks on her wrist and around her neck." Adams testified that he took a statement from her through an interpreter.

Officer Bryan Curtis of the Lansing Police Department testified that he and Officer John Chamberlain responded to a domestic complaint at the Foster Street residence on December 31, 1999. Curtis testified that he "took a Personal Protection Order [PPO] Violation Report" from

¹ Blackman testified that defendant and Xiong spoke and understood a small amount of English.

Xiong and that under the terms of an existing PPO, defendant was not allowed to enter the premises.

Xiong testified through an interpreter as follows: She came to America from Laos in 1991 with her husband, defendant. She and defendant divorced in June 1999. She obtained a PPO against defendant in August 1999 because defendant “bit her in struggle in neck.” The PPO specified that defendant could not be present at Xiong’s house. On October 1, 1999, defendant broke the window in the basement of her house and came into the basement some time after midnight. Defendant told her that the police had allowed him into the house and she responded that she did not believe him. She called the police, who took him off the premises.

Xiong further testified that on December 15, 1999, she entered her home and realized that defendant was present. She tried to drive away from the premises with her children in a van but defendant blocked her way, got into the van, pulled her hair, pushed her down, and placed both of his hands around her neck. Defendant threatened to break her neck and then tied her hands together with a piece of rope, took off her clothes, and raped her in the van while the children cried behind the van. Defendant then let her back into the house, where she made a meal for the family. She then took defendant to his cousin’s home and eventually called the police. The police told her she needed to move from her home, so she moved with her children to the CADA shelter.

Xiong further testified that on December 31, 1999, she stopped at a gas station with her children and when she left the gas station she realized that defendant was in her van. Defendant told her he needed a ride home, so Xiong took him to the Foster Street residence. After arriving there, defendant took the van’s key and told Xiong that she had to come inside the house and have dinner with him. Xiong ran with five of the children² to a neighbor’s home and called the police.

Defendant testified through an interpreter as follows: He did not learn of the PPO until seeing Xiong on December 15, 1999. He did not meet with Xiong at a gas station in December; instead, Xiong came to meet him at the Foster Street residence. Xiong had previously stolen money from him and had had an abortion.³ She has not been a good mother to the couple’s children and has refused to sleep with him. He does not understand “why she’s doing this to him.”

On cross-examination, defendant testified that he had not realized at the time of the incidents in question that the divorce from his wife had been finalized. He further testified that even though a judge had told him not to go to the Foster Street residence, he went anyway because “it was his house.” He denied breaking a window in the residence in October 1999. He admitted that he had received a copy of the PPO before going to the Foster Street residence in

² The parties apparently had six children, one of whom allegedly remained with defendant when Xiong ran to a neighbor’s house on December 31.

³ We note that defense counsel gave defendant an opportunity to make an open-ended statement about the case, and defendant mentioned several circumstances that have no clear relation to the charge at issue.

October, but later stated “that he received the paperwork after the incident.” He then testified that “he doesn’t understand what [a] PPO is and he can’t recall the time or day he was served it.”

Defendant denied choking or raping Xiong on December 15. He stated that he and Xiong “have a good relationship.”

The trial court convicted defendant, stating, in part:

It is undisputed that a personal protection order was issued and that it was served upon the Defendant on or about August 19, 1999. That personal protection order prohibited the Defendant from appearing at the residence or workplace of the petitioner, Tia [sic] Xiong, also appearing in sight of the petitioner, also from entering on to [sic] property occupied by the petitioner, also from approaching the petitioner in a public place or private property.

I find the Defendant’s testimony that he did not believe and still does not believe that his ex-wife did not and does not want to see him or be around him, I find this testimony to be totally without credibility in view of the undisputed facts that she got a PPO against him, that she called the police every time he appeared, that she filled [sic] for divorce, and that she moved her six children and herself to a CADA shelter and out of the house in order to avoid him. I, therefore, give Defendant’s entire testimony very little credibility.

* * *

I find that all three of these contacts were willful, none was accidental.

* * *

This course of conduct would cause a reasonable person in Yia Xiong’s position to suffer emotional distress, to suffer from fear, to feel intimidated and harassed and terrorized, and she did, in fact, suffer all of those feelings as shown by her fear in talking to the police officer and as shown by the fact that she would have taken the desperate step of moving all six of her children and herself to a shelter rather than remaining in the home where the Defendant could get at her.

The Defendant threatened to kill her in the van, and he showed that he had no qualms against committing acts of violence against her when he strangled her and tied her up on that occasion.

I believe all of the elements have been met

On appeal, defendant contends that the trial court erred in finding him guilty of aggravated stalking because he had no intent to violate the PPO. Specifically, defendant contends that he “did not comprehend the contents of the PPO.” His appellate brief states that “defendant, a non-English speaking immigrant from Laos, who speaks the Hmong language, was given a PPO . . . that was written in English, and was not given the assistance of an interpreter to translate the document and explain its meaning to him.”

In reviewing the sufficiency of the evidence in a bench trial, we view the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could have determined that the prosecutor proved the elements of the crime beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985). We review the trial court's findings of fact for clear error, giving regard to "the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." MCR 2.613(C). "A finding of fact is considered 'clearly erroneous' if, after review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made." *People v Hermiz*, 235 Mich App 248, 255; 597 NW2d 218 (1999).

Initially, we note that aside from citing a statute relating to the appointment of an interpreter, defendant has cited no authority at all in support of his argument. Accordingly, he has abandoned the issue for purposes of appeal. See *People v Watson*, 245 Mich App 572, 587; 629 NW2d 421 (2001). However, even if we *were* to review this issue, we would find no error requiring reversal. "Stalking" is defined as

a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested. [MCL 750.411i(1)(e).]

The offense becomes "aggravated stalking" if one of the following conditions is met:

(a) At least 1 of the actions constituting the offense is in violation of a restraining order and the individual has received actual notice of that restraining order or at least 1 of the actions is in violation of an injunction or preliminary injunction.

* * *

(c) The course of conduct includes the making of 1 or more credible threats against the victim [MCL 750.411i(2).]

The evidence, viewed in the light most favorable to the prosecutor, sufficiently supported defendant's conviction. Indeed, Xiong's testimony sufficiently established the existence of a course of harassing conduct that would make a reasonable person feel intimidated and that in fact made Xiong feel intimidated. Moreover, Xiong testified that defendant threatened to kill her, thus satisfying MCL 750.411i(2)(c). Additionally, Xiong's testimony that defendant broke the window of the Foster Street address on October 1, 1999, in order to enter the home supported the conclusion that defendant knew about the PPO and understood what it meant, thus satisfying MCL 750.411i(2)(a). Although defendant testified that he did not understand the PPO, the trial court largely disbelieved his testimony, and we defer to the trial court's assessment of a witness' credibility. MCR 2.613(C). The trial court did not clearly err in its findings of fact, and reversal is unwarranted.⁴

⁴ Defendant makes the brief assertion in his appellate brief that the trial court erred by failing to
(continued...)

Defendant also argues that the trial court imposed a disproportionate sentence because defendant “led an exemplary life for nine years,” because “[t]he stress of the divorce prompted him to act out,” and because he did not cause Xiong to “suffer more than incidental injuries.”

We review sentencing decisions for abuse of discretion. *People v McGrady*, 213 Mich App 474, 483; 540 NW2d 718 (1995). A trial court abuses its discretion if it violates the principle of proportionality.⁵ *Id.* This principle is violated if the sentence is not proportionate to the seriousness of the circumstances surrounding the offense and the offender. *Id.*

The maximum term of imprisonment for the aggravated stalking offense in this case was five years. See MCL 750.411i(3)(a). The trial court sentenced defendant to forty to sixty months’ imprisonment. This sentence did not violate the principle of proportionality because the circumstances of the offense were severe (indeed, Xiong testified that defendant tied her up and raped her), defendant had a prior felony conviction for assault and a misdemeanor conviction for domestic violence, and defendant terrorized Xiong to an extent that she moved to a women’s shelter. No abuse of discretion occurred.

Affirmed.

/s/ Daniel S. Owens
/s/ Michael J. Talbot
/s/ Patrick M. Meter

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thoroughly examine the qualifications of the interpreter. However, we decline to address this issue because defendant treats it cursorily and fails to raise it in the statement of questions presented for appeal. See *Watson, supra* at 587, and *Orion Twp v State Tax Comm*, 195 Mich App 13, 18; 489 NW2d 120 (1992).

⁵ The trial court did not use the statutory sentencing guidelines for defendant’s conviction because the parties “couldn’t find a grid in the sentencing guidelines for aggravated stalking.” On appeal, defendant does not challenge the trial court’s action or inaction with respect to the sentencing guidelines but instead merely argues that the sentence violated the principle of proportionality.